In the High Court of Punjab and Haryana, Chandigarh

C.W.P. No. 14051 of 2006

Date of Decision: September 5, 2006

Kartar Singh

…Petitioner

Versus

State of Haryana and others

…Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE M.M.S. BEDI

PRESENT: Mr. Jagbir Malik, Advocate,
for the petitioner.

JUDGMENT

M.M. KUMAR, J.

This petition filed under Article 226 of the Constitution prays for quashing order dated 2.6.2006 (P-4), whereby the petitioner has been retired compulsorily from service. A further prayer has been made for directing the respondents to reinstate the petitioner in service with all consequential benefits.

Brief facts of the case may first be noticed. As per the averments made in the petition, the date of birth of the petitioner is

1.12.1952. He has joined the respondent Department on 15.1.1971 and has completed more than 25 years qualifying service. He was working on the post of Assistant Sub Inspector. On 15.11.1999, one Pardeep Kumar filed a Criminal Complaint against the petitioner in the Court of Judicial Magistrate Ist Class, Jhajjar, alleging that the petitioner has taken Rs. 4,300/- forcibly from him. Pardeep Kumar had sought a direction from the Court against the petitioner to return him Rs. 4,300/- plus Rs. 50,000/- as compensation. On 15.11.2001, respondent No. 3 has imposed on the petitioner a punishment of stoppage of two annual increments with cumulative effect. The appeal filed by the petitioner against the said order was also dismissed. Challenging the aforementioned orders the petitioner filed C.W.P. No. 3535 of 2003 and this Court vide order dated 13.5.2004 (P-1) set aside the order dated 15.11.2001 as well as the order passed by the Appellate Authority. It is appropriate to mention here that while setting aside the above mentioned orders, the Division Bench of this Court made it clear that the decision of the writ petition was not to preclude the competent authority from passing fresh order after holding an enquiry in accordance with the procedure prescribed under the Rules and after complying with the principles of natural justice.

On 2.1.2006, respondent No. 2 served a show cause notice (P-2) upon the petitioner for retiring him compulsorily (P-2). The respondents also supplied to the petitioner the gist of his ACRs for the years 1995-96, 1998-99, 1999-2000 and 2000-2001, which would indicate that the integrity of the petitioner was doubtful. In various other columns of ACRs, adverse remarks have also been

recorded. The gist of the foregoing ACRs along with conveyed remarks is as under:-

" ASI Kartar Singh No. 2/RR was recruited in Police Department on 15.1.1971 and his date of birth is 1.12.1952 and has completed more than 25 years qualifying service. His service record is examined in this office which is discussed below.

He has earned following adverse remarks in his ACR during his service:-

05.10.1995 to 31.03.1996:

1.	Honest	Received oral complaints but not proved.
2.	Interest in latest modes of investigations of Police	Less
3.	Practical knowledge of latest Cr.P.C.	Less
4.	Confidence	Less
5.	Special	He is having less interest in finishing of his work. Given oral warning a number of times. Needs to do god. Manner of talking is not good.

25.09.1998 to 19.03.1999:

1.	Honest	Corrupted Reputation
2.	Moral Character	Not good.

3.	Moral courage in showing the wrong on the part of subordinates	Average.
4.	Manner of behaviour with general public	Average.
5.	Behaviour with subordinates and with companions	Average
6.	General control efficiency and skill of organization	Average
7.	Nature and Character	Nature is good and character is average.
8.	Skill to command	Average.
9.	Interest in latest modes of investigations of Police	Average.
10.	Qualification regarding investigation and solution	Average.
11.	Practical knowledge of latest Cr.P.C.	Average.
12.	Faith	Unfaithful.
13.	Offence, if any and if ever told t his officer	He is indiscipline, irresponsible, and careless ASI. He has been condemned 6 times due to delay in investigation and for remaining absent on important occasions. He is habitual of approach for the Posting. He has been given two Advice notes on 16.11.98 and 15.12.98.
14.	General	His work remained below average for the reporting period.

20.11.1999 to 31.03.2000:

1.	Honesty	Enquiry is pending for taking money and beating.
2.	Manner of behaviour with general public	Average.
3.	Behaviour with subordinates and with companions	Average.
4.	General control efficiency and skill of organization	Average.
5.	Skill to command	Average.
6.	Interest in latest modes of investigation of Police	Average.
7.	Qualification regarding investigation and solution	Average.
8.	Practical knowledge of latest Cr.P.C.	Average.
12.	Faith	Average.
13.	Offence, if any and if ever told to his officer	Enquiry is Pending.
14.	General	Work remained Average.

14.04.2000 to 31.03.2001:

1.	Honesty	Two annual increments were stopped for the offence of taking Rs. 4,300/- bribe while posted as ASI Incharge in Police Station Chhuchhakwas.

2.	Moral courage in showing the wrong on the part of subordinates	Moral Courage is not.
3.	Manner of behaviour with general public	Not good.
4.	Faith	Unfaithful.
5.	Offence, if any and if ever told to his officer	Two increments were stopped for found guilty in inquiry.
14.	General	He is a Corrupt ASI.”

The respondents also confronted to the petitioner with various punishments awarded to him in the year 1998-99 along with the prima facie view of the Director General of Police concluding that the petitioner has outlived his utility as police officer and was not fit to be retained in service any further. The aforementioned details of punishments and opinion reads as under:-

“1. He was awarded punishment of Censure in 1998 for keeping the file with him of case FIR No. 64/98 U/S 148/149/307 IPC and FIR No. 73/98 U/S 148/149/307/323 IPC PS Beri Pending W/O any reason.

2. He was awarded punishment of Censure in 1998 for not taking interest in investigations of criminal cases.

3. he was awarded punishment of Censure in 1998 for not furnishing the list of gamblers.

4. He was awarded punishment of Censure in 1998 for not taking interest in investigations of criminal cases.

5. He was awarded punishment of Censure in 1998 for absent from duty.

6. He was awarded punishment of Censure in 1999 for absent from duty.

In view of the above resume of service record ASI Kartar Singh No. 2/RR, he has outlived his utility as Police Officer and is not fit for retaining in service any further. It has therefore, been proposed to retire him compulsory in the public interest under PPR 9.18(2).

Sd/- Director General of Police,

Haryana."

The petitioner gave a detailed reply to the show cause notice (P-3) by submitting that the matter regarding charge of Rs. 4,300/- due to which adverse remarks have been made in the ACRs for the period 20.11.1999 to 31.3.2000 and 14.4.2000 to 31.3.2001, was pending in the Court of Judicial Magistrate Ist Class, Jhajjar. He has further submitted that punishment of stoppage of two increments was awarded on the basis of the aforementioned complaint, which was set aside by this Court, therefore, entry of the same has to considered to be washed in Column No. 5 of the ACR for the period from 14.4.2000 to 31.3.2001. The petitioner also took the plea that through out his carrier of 35 years of service, he has worked very hard and with honesty and dedication.

After seeing the confidential record, punishments inflicted, considering the reply of the petitioner and after obtaining approval of the State Government vide Memo. No. 5/28/2006-3HGI, dated 23.5.2006, respondent No. 2 passed an order dated 2.6.2006, under the provisions of Rule 9.18(2) of the Rules, compulsorily retiring the petitioner from service with immediate effect (P-3). The aforementioned order of compulsory retirement is the subject matter of challenge in the instant petition.

Mr. Jagbir Malik, learned counsel for the petitioner has argued that the impugned order of compulsory retirement has been passed on the basis of short period of the ACRs i.e. for the period from 5.10.1995 to 31.3.1996, 25.9.1998 to 19.3.1999, 20.11.1999 to 31.3.2000 and 14.4.2000 to 31.3.2001 whereas the petitioner has to his credit has a long service of 35 years. He has also stated that the ACRs for the period 20.11.1999 to 31.3.2000 and 14.4.2000 to 31.3.2001 could not be taken into consideration, inasmuch as, the same are based on the complaint made by one Pardeep Kumar, for which initially punishment of stoppage of two annual increments was inflicted upon him, which was subsequently set aside by this Court. Learned counsel has further argued that the petitioner cannot be punished twice for one offence. He has relied upon the judgment of this Court in the case of Ex-Head Constable Hari Singh v. State of Haryana and another, 2004 (6) SLR 740. According to the learned counsel, the impugned order is liable to be set aside being the result of double jeopardy. He has then argued that the reply to the show cause notice filed by the petitioner has not been considered at all and

principles of natural justice have not been complied with, inasmuch as, no speaking order has been passed. According to the learned counsel, as per Rule 9.18 of the Rules, complete service record should have been taken into consideration for retiring any employee compulsorily. He has asserted that except for a period of 29 months from 5.10.1995 to 31.3.1996, 25.9.1998 to 19.3.1999, 20.11.1999 to 31.3.2000 and 14.4.2000 to 31.3.2001, no other adverse remark was ever communicated to the petitioner and compulsory retirement of the petitioner is based only on the ACRs of 29 months.

Having heard the learned counsel at a considerable length and perusing the record, we are of the considered view that this petition is liable to be dismissed. It would be pertinent to make a reference to the relevant provisions of Rule 9.18 of the Punjab Police Rules, 1934 as well as Rule 5.32-A of the Punjab Civil Services Rules, Volume-II, which are reproduced hereunder:-

Punjab Police Rule (as applicable to Haryana)

"Rule 9.18 for Haryana. (1) Notwithstanding anything contained in these Rules, a retiring pension is granted to an officer –

(a) who is permitted to retire from service after completing qualifying service of twenty-five years or such lesser period of as may, for any class of officers, be prescribed; or

(b) who is compulsorily retired under sub-rule (2) after completing twenty-five years' qualifying service; or

xxx xxx xxx xxx xxx

xxx xxx xxx xxx

(2) The Inspector-General of Police may, with the previous approval of the State Government; compulsorily retire any Police Officer, other than an officer belonging to Indian Police Service or Haryana State Police Service who has completed twenty-five years' qualifying service, without giving any reasons. An officer who is so compulsorily retired will not be entitled to claim any special compensation for his retirement."

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"5.32-A. The rule for the grant of retiring pensions is as follows:--

(a) xxx xxx xxx

(b) xxx xxx xxx

Note 1.-- The Government retains an absolute right to retire any Government employee after he has completed twenty-five years of service qualifying for pension if he is holding a pensionable post or has completed service for a similar period if he is holding a non-pensionable post, but is entitled to the benefits of Contributory Provident Fund, without giving any reasons and no claim to special compensation on this account will be entertained. This right will not be exercised except when it is in the public interest to dispense with

> the further services of a Government employee such as on account of inefficiency, dishonesty, corruption or infamous conduct. This clause (b) of this rule is intended for use—"

Rule 9.18 (2) of the Rules stipulates that the Inspector-General of Police may, with the previous approval of the State Government; compulsorily retire any Police Officer, other than an officer belonging to Indian Police Service or Haryana State Police Service who has completed twenty-five years' qualifying service, without giving any reasons. An officer who is so compulsorily retired will not be entitled to claim any special compensation for his retirement.

Likewise Note 1 below Rule 5.32-A gives the Government an absolute right to retire any Government employee after he has completed twenty-five years of qualifying service for pension if he is holding a pensionable post. This right cannot be exercised except when it is in the public interest to dispense with further services of a Government employee such as on account of inefficiency, dishonesty, corruption or infamous conduct.

On the basis of the report showing integrity doubtful, the petitioner has lawfully been retired from service, which is in larger public interest as postulated by Rule 9.18 of the Rules as well as Rule 5.32-A of the Punjab Civil Services Rules, Volume-II. A perusal of the adverse remarks recorded in the ACRs of the petitioner from time to time reveals that he has a chequered record. His ACR as referred above clearly show that he is indiscipline, irresponsible, careless,

condemned six times due to delay in investigation and for remaining absent on important occasions, habitual of approach for posting, having corrupt reputation, and his work remained below average. For the period from 25.9.1998 to 19.3.1999 it has been recorded in unequivocal terms in column 1 concerning Honesty that he had 'Corrupted Reputation' and for the period from 14.4.2000 to 31.3.2001 in Column 14 of General Remarks it has been recorded as '……Corrupt ASI'. Thus, the integrity of the petitioner has remained doubtful. It is well settled that if integrity of an employee is doubted even once then such an employee may have to be chopped off as a deadwood, which is in larger public interest. The aforementioned proposition has repeatedly been considered by Hon'ble the Supreme Court. In **Baikuntha Nath Das v. Chief District Medical Officer, Baripada, (1992) 2 SCC 299**, the whole earlier case law was reviewed and following five propositions were extracted which reads as under:-

> "34. The following principles emerge from the above discussion:
>
> (i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.
>
> (ii) The order has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the government.

(iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (a) mala fide or (b) that it is based on no evidence or (c) that it is arbitrary – in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.

(iv) The government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter – of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference."

It is equally well settled that once there is an entry of 'integrity doubtful' in the service record of an employee then it is considered to be in larger public interest to retire such a person prematurely. In that regard, reliance may be placed on the judgments of Hon'ble the Supreme Court in the cases of **Union of India v. Ajoy Kumar Patnaik, (1995) 6 SCC 442** and **Jugal Chandra Saikia v. State of Assam, (2003) 4 SCC 59**. In para 5 of the judgment in Jugal Chandra Saikia's case (supra) it has been noticed that the review committee had concluded that the delinquent employee had outlived its utility and was of doubtful integrity. The principles of law as laid down in Baikuntha Nath Das's case (supra) have been followed and applied in that case.

One argument raised by the learned counsel for the petitioner remains to be dealt with. He has argued that adverse remarks in respect of stoppage of two increments recorded in Column 5 of his ACR for the period from 14.4.2000 to 31.3.2001 cannot be taken into consideration as the order stopping the increments was set aside by this Court on 13.5.2004 while allowing C.W.P. No. 3535 of 2003. It is true that the aforementioned adverse remarks would not survive in Column 5, yet it does not improve the case of the

petitioner. As already noticed in the preceding paras of this judgment, the petitioner has been assessed as a corrupt officer on more than two occasions. For the period commencing from 25.9.1998 to 19.3.1999 and 14.4.2000 to 31.3.2001 there are unequivocal remarks showing that he is a corrupt officer. Even otherwise he has become deadwood and has lost interest in finishing the work as is evident from the perusal of the ACR of the year 1995-96. For the year 1998-99 he has been assessed as an in-disciplined, irresponsible and careless officer. He was further found to be habitual absentee on important occasions. The reliance of the petitioner on the judgment of this Court in Hari Singh's case (supra) is also without any substance as it has been found in that case that Hari Singh did not earn any adverse entry for 14 years preceding the date of the order of premature retirement. A very old and archaic entry recorded in the year 1972 was made the basis of his compulsory retirement. The aforementioned judgment is not even remotely attracted to the facts of the present case. Therefore, the argument raised is hereby rejected.

When the facts of the present case are examined in the light of the principles laid down by Hon'ble the Supreme Court in the aforementioned judgments, no doubt is left that the order dated 2.6.2006 (P-4) deserves to be upheld as the same is in larger public interest because it seeks to get rid of an inefficient and dishonest officer. The above mentioned order has been passed in consonance with the requirements of Rule 9.18 of the Punjab Police Rules, 1934 as well as Rule 5.32-A of the Punjab Civil Services Rules, Volume-II,

as has already been observed in the preceding paras. Therefore, there is no merit in this petition.

In view of above, the writ petition fails and the same is dismissed.

(M.M. KUMAR)
JUDGE

(M.M.S. BEDI)
JUDGE

September 5, 2006

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